Supreme Court, U.S.
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NO.

In The

Supreme Court of the United States

Alexander Zinchenko(In Pro Se)
V00139-B4-137 P. O. Box 5005 State Prison,
CALIPATRIA, CA 92233,Ph. (760)348-7000 Ext.5164
Petitioner

v.

L.B. Scribner, Warden Calipatria State Prison - CA
Respondent

Represented by: Office of California Attorney General
Edmund G. Brown, Jr.
P.O. Box 944255,
Sacramento, CA 94244-2550
Ph. 916-322-3360

On Petition for Writ of Certiorari
To The United States Court of Appeal
For The Ninth Circuit No. 07-55048

PETITION FOR WRIT OF CERTIORARI

Nick A. Kolev, PhD, No Attorney, Next of Kin
World Outreach Christian Ministry
1438 Oak Street, Los Angeles CA 90015;
Ph: 213-741-0155

I. QUESTIONS PRESENTED FOR REVIEW

"IN THE TIME OF UNIVERSAL DECEIT TELLING THE TRUTH IS A REVOLUTIONARY ACT" G. Orwell

Zinchenko's case arose from killing of mafia boss Shakro Kakachia in Berlin in 1996 related to Oligarch B. Berezovsky and ties to Chechen terrorists and Bank of New York 15 billion money laundering.. Zinchenko and Ivlev knowing the hit man M. Dovganuk double identity supplied by CIA and FBI were sentenced FOR LIFE for crime nobody saw, no irreparable damages, No DNA, no proof, no alibi investigation, no confession, no interrogation of defendants. As None Attorneys as laymen, we raise the following questions for review:

1/. If next of kin, or even church can file Habeas Corpus for State Prisoner who is held 24/7 under administrative arrest, case files archived, either sealed by trial judge.

2/. Whether archived and sealed files in purely criminal case/No FISA case/should be available to Next of Kin for Habeas Corpus purposes and ignorance of such written request by trial and Habeas Corpus judges is violation of Judicial ethics

3/. Whether an "Ex-parte" communication between Magistrate judge and prison Litigation barring him to read and sign his Habeas Corpus could be a subject to Judicial disciplinary action according to meaning and purpose of US Code, Title 28 §2254

4/. If Prima Facie deceit/written lies about name of Warden/Court Jurisdiction/, form and shape of Petition, censoring of petition contents - doom the Fair and Due process or are subject to Judicial discretion.

5/. If 24 claims of violation of 4th, 6th, 14th Amendments, double jeopardy could be decided without file, hearings, warden answer and the process still fair and due?

CORPORATE STATEMENT

The undersigned, Mr. NICK A. KOLEV, PhD, P.E.(Habeas Corpus next of kin), certifies that the following listed party (or parties) has (have) a direct, pecuniary interest in the outcome of this case.

PARTY.:

Mr. James V. de Sarno Jr. - Former FBI Chief in L.A. ;

Mrs. Jennifer Amo - FBI Agent promotion work;

Mr. Boris Berezovsky-Russian Oligarch in exile in London, England/ Aeroflot theft of $900 million, AvtoVAZ theft of $400 million/Illegal real estate France, Holland

Mr. Semeon Mogilevich - Russian Jewish mafia boss money laundering, drug and weapon dealings.

Mr. Thomas Reiny – Former Bank of New York CEO

Mr. Mark and Lisa Babaian – multimillion fortune mobsters on pay roll of FBI.

Mr. Igor Krasisy - International drug operations and money laundering – on pay roll of FBI.

II. LIST OF ALL PARTIES TO THE APPEAL US COURT OF APPEAL, NINTH CIRCUIT, (No. 06-55048)

Alexander Zinchenko – Petitioner
Calipatria State Prison Inmate,
V00139-B4-137, P.O.Box 5005,
Calipatria, CA 92233, Phone: (760) 348-7000, Ext. 5164,
Fax (760) 348-6064
House of Prayer Christian Ministry –
Next of kin for Petitioner
1438 Oak Street, L.A. CA 90015; Phone (213) 741-0155;
N. Kolev 16207 Ardmore Ave., Bellflower,CA 90706
Phone(562) 291-9681;
S. Radomskiy 140 N. Montebello Blvd., # 408
Montebello, CA 90640 Phone: 323-724-4971

Plaintiff **V.**

MR. L. E. SCRIBNER
CALIPATRIA CF WARDEN
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CALIPATRIA, CA 92233

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PETITION FOR WRIT OF CERTIORARI

I. OPINIONS BELOW

Alexander Zinchenko., Appellant and Petitioner, respectfully petitions for WRIT of CERTIORARI from Order of US Court of Appeal, Ninth Circuit from June 01th, 2007 (See . Apx. 1) from Habeas Corpus Case disposed by US DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA On December 14th, 2006 No.: CV-06-0953-JFW (FMM) (See P. Apx. 2) Certificate of Appellability denied on 01/11/2007.

Petition for Certificate of Appellability" to US Ninth Circuit Court of Appeals according to criteria set up in Fed. Rules Ap. Pr. 22(b) denied on June 01th, 2007, (See P. Ax. 1), According to US SC Rule 13.(1), the Petition is timely if filed within 90 days from June 01th, 2007 (See P. Ax. 1),

This case is bonanza of Constitutional abuses, incompetence, bias and prejudice in Criminal law, Civil rights and Habeas Corpus.

II. JURISDICTION

US Supreme Court has original Jurisdiction under US Constitution Article III, § 2 to All Cases in Law and Equity.

The Justifiable Dispute involves validity of 28 U.S.C. § 1654 "In Pro Se" rights in all Courts, Fair and Due process under State (Cal. Constitution Article I, §§ 7,15) and Federal Law (US Constitution Amendments

I, V, XIV) when Petitioner is held in State custody in violation of Federal law 28 U.S.C. § 2254.

III. CONSTITUTIONAL AND STATUTARY PROVISIONS INVOLVED

USCA Title 28, §2242 Habeas Corpus filing gives us, the church volunteers, the right to file Habeas Corpus in behalf of everybody who could be beaten, tied up, tortured, or simply denied access to courts by denying his access to court files, to legal library, to US mail or to helpers like us, who volunteer 100% his time and effort. In USCA Title 28, § 2242, ¶ 1, the first paragraph says: *in writing signed and verified by person in custody,* but clearly DOES NOT SAY *drafted by person in custody.* Further on USCA Title 28, § 2242, ¶ 1 says: *by someone acting on his behalf/ e. a. signing and sending/,* it does not say by an attorney? Does it?

Local Rule 83-2.1 requiring court presentation In Pro Se or by Attorney used by both Magistrate Judges F. Olguin and F. Mumm as an attempt to prohibit filing on behalf of A. Zinchenko. While access to him and communication with him was blocked.

USCA Title 28, §2254, Rule 11. *The Federal rules of Civil Procedure, to the extent they are not inconsistent with these rules/ of H.C./, may be applied, when appropriate.* Therefore the special HC Rule 11 USCA Title 28, §2254 should not be taken over by General F.R.C.P. 83-2.1.

Stay and abeyance. The dilemma posed by the AEDPA *limitations period makes any* DISMISSAL WITHOUT PREJUDICE a DISMISSAL WITH PREJUDICE Several circuits, including the Ninth Circuit, have adopted a procedure known as "stay and abeyance" or "withdrawal and abeyance" to deal with mixed petitions. In the Ninth Circuit, when a petitioner files a mixed petition, the court must give the petitioner the opportunity to strike or withdraw the unexhausted claims. *Olvera v Giurbino* (9tl Cir 2004) 371 F3d 569, 572; *Anthony v Cambra* (9th Cir 2000) 236 F3d 568, 574

IV. STATEMENT ON THE CASE

Mr. A. Zinchenko was accused of two strikes On September 8th, 1999 attempted carjacking and participation in attempted murder of Mark Babaian at his home: These charges were dismissed and none of the other 3 defendants served prison time

On September 17th 1999 A. attempted murder with grate bodily injuries of Mark Babaian together with his father Victor Ivlev in front of child care facility at 1040 N. Vista Ave., West Hollywood. Originally M Babaian stated to sheriff deputies that he does not know who attacked him after that has changed his depositions in FBI against A. Zinchenko.

Zinchenko trial case was run by J. V. de Sarno then FBI chief in L.A. Zinchenko was illegally wiretapped and surveyed by FBI between 09/1999 and

01/2000. It was a contract for his murder, coordinated by mafia attorney Gloria Bezman. Zinchenko wife also received threatening letters and left the country with their baby child.

After dismissal of Federal case in September 2001. J. V. de Sarno ordered Police Detective Shawn Cohen to arrest him/without proper order and probable cause/ after being released from Federal custody and to move him to L.A. detention. For 18 month Zinchenko waited trial for dismissed charges in double jeopardy and was convicted in May 2003 by jury. The Great American legal system ?! Federal case-dismissed. Federal bail $25,000.State case – 25 years to life, bail $1,500,000. His guilt knowing double identities of mobsters Russia/USA related to FBI and CIA.

V. STATEMENT ON THE FACTS

The final HB Petition carried in person to Zinchenko in February 11th 2006 did not reach him because visitation officer Lt. Bell denied access to him.

N. Kolev addressed the problem writing letters to CF Calipatria Litigation Department Ms. Gabriella Nunez; filed a complaint with Rancho Cucamonga reviewing office; send letters and faxes to Lead Ombudsman Ken Hurdle and even Secretary of Department of Corrections-Mrs. Jeanne Woodford. Although he received an answer from Warden L.E. Scribner, the problem was not corrected.

On February 23, US Magistrate Judge F. Olguin dismissed the Petition with leave to amend. The dismissal was bias because did not consider any of the Petition grounds, including double jeopardy claim, demanding court investigation. Also he was directing Petitioner to file amended petition to nonexistent warden.

Motion for extension of time; Motion for Peremptory Challenge of US Magistrate Judge F. Olguin, send to Zinchenko on March 7th, with over night express never reached him, although was send to him by fax and by mail and unsigned courtesy copy was filed with court on March 23, 2006. N. Kolev filed a notice for destruction of express mail. A. Zinchenko signed the fax version, but mail version although claimed lost by USPS was delivered after the dead line.

On March 27th, while challenged peremptory and before US District Judge J. Walter decision on April 4th, Judge F. Olguin issued a void order to strike all courtesy copies filed by N. Kolev, including notice of destruction of mail.

On April 7th, 2006 Magistrate Judge F. Mumm replaced Magistrate Judge F. Olguin. On April 21st, S Radomsky mailed a motion for extension of time until May 17th, 2006, N. Kolev mailed a courtesy copy to court. On May 4th, much ahead of dead line Judge F. Mumm filed recommendation for dismissal of petition.

Attempts of N. Kolev and S. Radomsky to schedule appointment for May 27/28 had strange twist. On May 23d it was refused, on May 25th was offered 11.15 a.m. Sunday and late the same day was refused again-Calipatria SP Officer Gregg, 760-348-7000, ext. 5717 blocked our scheduled appointment with Zinchenko.

Gabriella Nunez held his Amended Petition in person without delivering it to him, or even letting him to know about it from May 30th until his time expired in Friday June 2d, when she called at 4.00 p. m. well aware of that at that time nobody is available in Sacramento or Rancho Cucamonga to interfere.

N.Kolev send to Zinchenko Motions for extension of time three times: March 23d, April 21, May 21 and including REQUEST FOR subpoena Duce Tecum, witness affidavits: See Attachment 1, ¶ 2-8. p. 33-36 of FAC.

Having piling prove for judge EX_PARTE manipulation of the case, we filed a complaint with 9th circuit Court of Appeals against Magistrate Judges F. Olguin, F. Mumm and US District Judge J. Walter and mail it on March 21st, 2007 from L.A. to San Francisco. The complaint was time sensitive because the abuse of Habeas Corpus process and appeal of A. Zinchenko were related.

Three weeks later on April 24th, 2007 Wednesday, N. Kolev received a message from Gwen

Baptist clerk - 9th circuit court of appeals holding the complaint because was few lines longer than 5 page limit. Such an abuse of the process?. Also the Apendix 347 pages document was held in the wrong place with the complaint, not with the petition for COA. In docket list Magistrate Judge F. Mumm stroke out of record 93 pages representing Zinchenko litigation position *such as: 1/. Petition to Federal Grand Jury for corruption investigation; 2/. Notice of Corrupt Ruling of magistrate Judge F. Mumm; 3/. Notice of filing objection to Magistrate judge F. Mumm order proposal; 4/. Objection to Magistrate judge order proposal; 5/. Notice of filing of final version of Amended petition of A. Zinchenko; 5/. Letter to Governor Scwarzenegger 6/. Letters/4 of them/ between Calipatria litigation Department and N. Kolev.*

VI. REASONS FOR GRANTING THE PETITION

The Court's Authority is not based on specific enforcement arm. Impartial and equal implementation of the Law is essential in maintaining its authority, which would be strongly undermined when judiciary takes sides, expresses prejudice, mends the law for personal benefit, pardon friends and cronies in Government office, Court accepted chaperoning from FBI how to dispose a case IS THE END OF JUSTICE SYSTEM THE WAY WE KNOW IT.

GROUND ONE: Violation of Right to Due Process of Law regarding access to Petitioner files in US District Court File No. 00-CR-89 and L.A. Superior Court: File No. BA221557/Fourteen Amendment Right/The denial of access is also a violation of Freedom of Information Act and California Public Law Act.

A. Zinchenko is incarcerated in California Calipatria State Prison: V00139-B4-137. Due to three Warden changes since December 2005: R. Stuart; G. Guarbino; L.E. Scribner and frequent Administrative segregation A. Zinchenko had limited time to work on his petition and relied completely on help from outside.

The California Public Records Act is contained in Government Code §§ 6250 to 6268.1

A person may bring proceedings for injunctive or declarative relief or writ of mandate in a court of competent jurisdiction to enforce his or her right to inspect or receive a copy of any public record. *Government Code § 6258*

Even though court records are specifically exempted from the Public Records Act, *See Government Code § 6254* and are thus not subject to disclosure under the act, both the First Amendment to the United States Constitution and the state constitution provide broad access rights to judicial hearings and records *United States Constitution, Article I; California Constitution, Article I, § 2(a).*

The names of qualified jurors drawn from a juror list for the superior court must be made available to the public on request Code of Civil Procedure *§ 237(a)(l).; § 206(f)*

A./SUPPORTING FACTS:

Since January 11th, 2006 N. Kolev wrote a formal letters to US District Court Chief Justice ALICE-MARIE H. STOTLER; to Mr. John Clarke- CEO L.A. Central Criminal Operations; to five trial attorneys: T. Flier; C. Leftwitch; M. Cavaluzzi; Sperber; P. Lake.

Also N. Kolev made a formal request to US District Judge C. Snyders; to L.A. Superior Court Trial Judge W. Pounders, to Prosecution team DA Assistant A. Colannino - None of them producing answer, or making the files available, or justifying the reason to deny them.

In his recommendation for dismissal from May 4th, 2006, Judge F. Mumm has ignored all of them. This is abuse of discretion and Habeas Corpus due process.

Relief: Is spelled in Penal Code § 1054.9. Access to discovery materials for post-conviction writ of habeas corpus or motion to vacate a judgment,

If within 15 days the opposing counsel fails to provide the materials and information requested, the party may seek a court order. Upon a showing that a party has not complied with Section 1054.1 or 1054.3

and upon a showing that the moving party complied with the informal discovery procedure provided in this subdivision, a court may make any order necessary to enforce the provisions.

.GROUND TWO: Violation of Right to Impartial Tribunal raised under 28 USCA § 2254 alleging IN FACT the Trial was dominated by a mob.

Frank v. Mangum, 237 U.S. 309, 35 S. Ct. 582, 59 L. Ed. 969 (1915): Opinion of the Court: *We of course agree that if a trial is in fact dominated by a mob, so that the jury is intimidated and the trial judge yields, and, the State deprives the accused of his life or liberty without due process of law in violation of the 14th Amendment of the US Constitution.*

Facts alleged in habeas corpus petition charging trial was dominated by mob authorized habeas corpus writ from federal court (Pen. Code Ga. 1910, §§ 796, 964; Laws Ga. 1929, p. 1544).

(1) Supporting FACTS: 1/. Mark/ aka Mikhail Dovgoniuk/ and Lisa/aka Iluschihina/Tonkih/ Babaian came to USA with large amount of cash, which they could not make on any legitimate employment or business Money laundering is a Federal crime under USCA Title 18 § 1956 and USCA Title 18 § 1957 carrying imprisonment up to 10 years, if the amount is over $10.000.

2/. Prove of money laundering. According to First Title Insurance Co. their house on 459 N. Croft Ave. was bought for $482,000 on 05/30/97 including 3 unemployed adults/plus Ludmila Tonkih/Borisova/Gregyl/ and a child/Max/.

3/. Mortgage payment. Their mortgage payment was $1,599 through Downey Savings./CRT p.906, ln.5/ According to prevailing rate of 8.5% the loan would be under $210,000.

4/. Large cash without legitimate source. The difference between 482,000 price plus 4-6% Broker commission, minus $210,000 equals $295,000-$300,000 CASH. There were no legal bank transfers. Mark Babaian bogus explanation was Cash was hand carried from Moscow on none existent Airfare Co. called TRANSAIR ./CRT p.860, ln.16-18/.

5/. No prove of legitimate job. He was not qualified to work with Realtor Aaron Berlin. According to Real Estate law, He had a just tourist status.

6/. Mark Babaian "employment" with body shop. He was claiming with tips $20/hour ./CRT p.994, ln.19-21/. Body shop is a heavy manual work available for young immigrants at wage $7-8/hr in 1996. To receive what he claimed $20/hr he has to be certified technician in few areas with at least 10 year experience. He was illegally in the country, without Social Security Number.

7/. People renting in their house. Mark cousin Igor Krassiyy/Igor Bond 007/ paid $1,500/month for room and board. Why? When 1 bd room apartment. was $730-$780 at that time, why he would pay double for loosing his privacy? In summer of 1999 Igor Bond was shearing with his homosexual Korean partner apartment at 1215 N. Sycamore Ave. # 207, L.A., CA 90038. The Korean Agent at the same time was FBI auditor for money laundering operation in CID Lab.

8./ Clinical Immuno-Diagnostics/CID/ Lab Employment. All of them Igor, Mark and Lisa claimed to be working there. Igor claimed to be the operation Manager ./CRT p.1076, ln. 25-26/ having command of his time to work flexible hours ./CRT p.1077, ln. 23-25/. Mark is *such a hard working employee*, than he does not know the address of the lab, claiming 4125 Wilshire Blvd., ./CRT p.829, ln.1-3/. For September 8th, 1999 Lisa Babayan claimed first to have Doctor's appointment, but when Dr. S. Porter did not confirm her bruises, after that Lisa claimed to be working in the CID lab. for that day.

N. Kolev had a chance to talk to Mr. Luis Fondevila, who recently bought the two story building at 4520 Wilshire Blvd., L.A. CA 90010 for $ 3,500,000 from Mob Inc Attorney Angela Barseghian SB# 140852. Angela was suspended twice for extensive period of time and did probation time in 1996 and 2000 basically for fraud to her clients.

The Russian lingo for corrupt Government Protection is "krysha"-"roof". Imagine what kind of stainless steel "roof" had to have this CID Lab in order to protect Medical marihuana business in the spinal cord of L.A. - Wilshire Blvd. Amazing! Isn't it!

from FBI offices at Wilshire and 405 Fwy is just 10 minutes drive to CID Laboratory on 4520 Wilshire Blvd. In the contract are listed all CID Laboratory contract employees, but between them we don't see Mark, Lisa or even cousin Krassiyy-all three of them at the time of trial claiming employment with CID Lab., Krassiyy being the Manager.

The CID lab was financed in 1998 by Bank of Commerce in San Diego. We appreciate these small banks with huge money transfers, located somewhere in the suite on the third floor with the windows looking towards Mexican border/9918 Hibert St. 3d floor, San Diego 92131. Obviously the cash in the safe of this bank needs no virtual time to cross the border.

9/. U. S. Bank also tainted in currency exchange violations, covering exactly the same period of time 1994/1999. Allegedly the cash transfers from Bank of New York to Bank of Commerce-San Diego, which is inside of U.S. Bank were further invested in the Funds, small portion in CID Lab.

Important connection - the lender of the loan for U.S. Bank building was Home Savings of America. The credit card fraud involving I. Krassiyy covered his

accounts with Home Savings of America. Mark and Lisa Babaian also had accounts with Home Savings of America, the bank which vanished exactly before scandals with these two banks.

10/. This CID Lab. at the *"cutting edge of Science and Research"* had no associations with other laboratories and research centers?!?

All the never used equipment was donated - just like the building - to Mobster Inc attorney A. Barseghian

11./ The starting, low profile - one FBI agent probe of BoNY in New York - demands Mobsters Inc. to go underground, to change identities, to get rid of people familiar with their previous identities. Mobster I. Krassiyy need to eliminate Zinchenko and his wife Lena first.

Surprisingly seven experienced attorneys on the case: Leftwich, Lake, Cavaluzzi, Sperber, Flier, Wefald, Nicolaysen could not see the connection problem Igor Krassiyy/Ivan Bond 007/ and Zinchenko. Zinchenko did credit card fraud in Las Vegas with Igor and Lisa Babaian by keeping Igor's documents and putting his picture. Alex Zinchenko knew Igor is using the same bank all the time - Home Savings of America. Alex believed the hit of $50,000 was a success, while it was a simple money laundering operation described at./CRT p.1484, ln.4-28/ and ./CRT p.1485, ln.1-12/. Igor got no problem with his Money laundering bank.

In August 1999 Igor and Babaians were concerned about Bank of New York probe and Zinchenko was huge liability, because he knew Igor and Babaians accounts and checks and could be very damaging witness in money laundering investigation.

12/. The Plan NOT ONLY to eliminate Zinchenko, but to justify Federal protection and change of Identity.

Igor Krassiyy/Ivan Bond 007/ although not being there brought in FBI to the hospital on September 18th, he also told LA PD and LA sheriff deputies :*"Mark told me these were Zinchenko and his father, who stabbed me*

13/. About the Mafias involved. */Due to space limit this section is abbreviated. Please check with FAC/.*

14/. The obvious involvement of FBI to cover up and frame. FBI compromised its Mob Protection operation by overdoing it. FBI are very heavy organization with limited staff -less than 12,000 people nationwide in 56 offices, They don't move their finger for petty crime. Here you have SA J. Amo and D. Spiser working full time and over time on "NO-thing" - on unemployed Zinchenko

15/. Illegal and unapproved surveillance with no evidentiary value regarding conspiracy in the past and no investigative matter as a goal, subject to § 995, Penal Code motion.`

All the procedures questioned here and produced by FBI SA J. Amo are actionable under Title 42 US Code § 1983. Civil action for deprivation of rights

16./ How the whole story was traced to FBI chief James V. de Sarno Jr. */Due to space limit this section is abbreviated. Please check with FAC/.*

17/. Psychology of the Mob supporting criminal intent. Olga Iluschihina *based on Russian police information* was certified as a organized prostitute since her Sochi period in early 80s. */Section is abbreviated. Please check with FAC/.*

18/. The Mob goal achieved. Witness protection—Federal, State witness protection program for money laundering gangsters

The purpose of framing Zinchenko and friends was to qualify for change of identity and protection.The federal witness protection program is set forth in 18 U.S.C.A. §§ 3521 to 3528.

/Section is abbreviated. Please check with FAC/.

19/. The failure of all nine yard regulations pertaining to organized crime. */Section is abbreviated. Please check with FAC/.*

20/. The bottom line question: Who is backing up Mr. de Sarno? Who is that powerful politician? Who is that Lobbyist? Who is the Jack Abramoff in this case to shuffle the chiefs of FBI, Federal and State Judges in New York and Los Angeles like bus boys in a busy restaurant?!? Who!?

Allegedly the answer is: Arkin, Kaplan & Cohen LLP originally, Arkin Group LLC, Guardsmark, LLC, .
/Section is abbreviated. Please check with FAC/

Mr. I. Krassiyy most probably was employed by Semion Mogilevich thru YBM Magnex - New York, Newton Pennsylvania, or London based companies involving the ex-wife of Semion Mogilevich Galina and UK Attorney Adrian Churchward. The companies dealing with magnets and military aircraft.

Mr. I. Krassiy is military aircraft electrical engineer. The money laundering business CID Laboratory - 4520 Wilshire Blvd.,L.A., was using as cover Bank of Commerce, located on the third floor of U.S. Bank 9118 Hibert St., San Diego.92131-1018

The money laundering operation was supervised by FBI Office just down the street on Wilshire Blvd.- 405 Fwy and also by second ex-wife of Semion Mogilevich Tatyana and her daughter Mila, living just few blocks on Wilshire Blvd., not counting the people hanging on Palm Terrace Restaurant in Santa Monica and S. Mogylevich mistress Galina Grygorieva living also in Los Angeles.

Mr. I. Krassiy did not money launder only for Semion Mogilevich, but as a good boy for his father too, who in the mid 90ies was Manager for the largest Russian airfare company Aeroflot in Havana, Cuba. Not too many people know the flight Havana-Moscow had a stop over on Lesser Antilles- in particular isle of

Barbados, which is having just like in L.A. Palm Terrace Restaurant.

GROUND THREE: Violation of Right to Constitutional Guarantee raised under 28 USCA § 2254 alleging double jeopardy charge for the same offence - Fifth Amendment Claim.

The Fifth Amendment to the United States Constitution declares that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." The Fifth Amendment is applicable to the states through the Fourteenth Amendment *Arizona v. Manypenny, 451 U.S. 232, 238, fn. 12, 101 S.Ct. 1657, 68 L.Ed.2d 58 (1981).*The California Constitution, Article I, § 15, similarly provides that "persons may not twice be put in jeopardy for the same offense."

(1) Supporting FACTS Defendant /D. Barashkov through his attorney G. Nicolaysen/ sought termination of the trial. *United States v. Scott, 437 U.S. 82, 100, 98 S.Ct. 2187, 57 L.Ed.2d 65 (1978).* However, a dismissal for legal insufficiency bars retrial-that's exactly what Attorney G. Nicolaysen cited as reason for acquittal. Please check his extensive pleadings at website: http://afda.org/afda/news /motion_carjacking.pdf

Most probably double jeopardy is the reason why US District Court files No. 00-163M/Criminal Complaint/ and CR 00-89-CAS in US District Court - Los Angeles disappeared and the names of Defendants V. Ivlev and Alex Zinchenko were removed from the

computer file system. file No. 00-Cr-89 from Riverside Archive: 23123 Cajalco Rd., Perris, CA 92570-7298 Phone: 951-956-2020 no reason for archiving.

GROUND FOUR: Violation of Right to fair and due process including the right to be committed by magistrate judge who must be an impartial judge. The Fourth Amendment claim against unreasonable searches and seizures.

Fourth Amendment issues cannot be raised on federal habeas unless the petitioner was deprived of the opportunity for a full and fair hearing on the issue in state court. *Stone v Powell (1976) 428 US 465, 494, 49 L Ed 2d 1067, 1088, 96 S Ct 3037.*

This is the case here. The validity of Warrant for Arrest of Petitioner A. Zinchenko has never been challenged regardless of its Constitutional deficiencies.

(1) Supporting FACTS A/. Nothing in the Complaint shows the qualifications of S. Cohen to write such a complaint, after the dismissal of Federal case. If Public Interest demands it, DA Office could prepare it, within 15 days of dismissal of the case, not a detective with unknown qualification and Zippo knowledge of the subject.

B/. Out of number of Law Enforcement officers, involved IN PERSON in original investigation LASD - Deputy T Caire I.D.266761; LASD - Deputy Alvarez I.D.280644; LASD - Deputy Robinson I.D.287337; LASD - Sergeant Rita Hall I.D.196037; LASD -

Sergeant R. Walker I.D.004195; LASD - Detective Alex Gilinets; LASD - Detective Richard Lucas; LAPD - Officer Baez I.D. 34572; LAPD - Officer Castillo I.D. 30932; Detective Gary Kaplan I.D. 5973; nobody, but nobody was qualified to write this complaint. That's why, FBI wanted somebody who knows nothing about it, like Shawn Cohen.

C/. The report of FBI Special Agent J. Amo is a hearsay evidence for the following reasons:

- J. Amo as stated in her affidavit had only 6 -7 months of experience, when she made the arrest in January 2000, According to Evidence Code §1231.3 she lacks it.. Law Enforcement Officer Testimony as to Statement.

-C/. According to the State law the evidence of these wiretaps, prepared by people with questionable reputation like informer I. Martynovich and prostitute L. Babaian is illegal:

Penal Code. § 631. Unauthorized wiretaps;

-D/. *Pitchess* motion A motion to discover the personnel file of a law enforcement officer, or to discover any other police agency record concerning the officer, is known as *a Pitchess* motion. *Pitchess v. Superior Court, 11 Cal.3d 531, 113 Cal.Rptr. 897, 522 P.2d 305 (1974).* -E. Staleness. It is important to make clear in the affidavit that the information set forth is current and thus can reasonably be expected to reflect the circumstances existing with respect to the place to

be searched and items to be seized as of the time the affidavit is signed.

Neither first Warrant of J. Amo , neither Second one of S. Cohen qualifies for that. They looked for nothing, they found nothing.

-F. Arrest without prove of committed crime. Beyond tempered hearsay "evidence" of illegal tapes, there s nothing to prove Zinchenko and Ivlev have been on September 17th, on the crime scene.

Arrest warrant for a person suspected of a felony begins with the filing of a written complaint under oath See Penal Code §§ 806, 813(a). People v. Sesslin, 68 Cal.2d 418, 426, 67 Cal.Rptr. 409, 439 P.2d 321 (1968); *see* Stats. 1995, ch. 563, § 4(a)(4) (legislative intent to codify *Sesslin.*

Obviously Judge C. Rappe was satisfied by phone from FBI, not by the warrant. He grew up and studied at the same epicenter of the money laundering scandal - Santa Monica. Surprise, surprise he was appointed to the bench, just like Judge W. Pounders by Armenian Governor G. Dukmejian. Even fake "Armenian" victim like M. Babaian was seen with a lot of Armenian sympathy.

-G/. The warrant is missing identifying information for the judge. The title of his office or the name of the court or other agency must appear on the warrant. Pen C §§814-815, 1427.

-H. Penal Code 871. Discharge of defendant;

Dismissal of complaint; Endorsement.

Judge C. Rappe failed to comply with above cited provision on Penal Code because there were no facts, no names of witnesses. This claim is valid if only never litigated in State Court.

GROUND FIVE: Violation of Right to be committed by reasonable bail. The Eighth Amendment claim The bail increased 100 times from Federal to State custody.

A right to bail generally is recognized in the Eighth Amendment to the Constitution, applicable to the states through the Fourteenth Amendment See *Scbilb v. Kuebel, 404 U.S; 357, 365, 92 S.Ct. 479, 30 L.Ed.2d 502 (1971).* the judge or magistrate must take into consideration the following factors:

Excessive bail as impairment of Defendants to prepare for the trial.

If the defendant has appeared before a magistrate on the charge contained in the complaint, indictment, or information, the bail is the amount fixed by the magistrate at that time. Penal Code § 1269b(b). "Penal Code § 1275. According to this provision of the code, judge C. Rappe decision to increase the bail 100 times was frivolous and there were no explanations.

Bail is set initially by the magistrate at the defendant's first court appearance. *Cal Const art I, §12; Pen C §1271*. The Federal Magistrate Judge set it at

$25,000. Judge C. Rappe disregarded it,. Another judge can change the original bail amount only for good cause. Pen C §1289. See In re Alberto (2002) 102 CA4th 421, 125 CR2d 526 ("good cause" requires change of circumstances; second judge had no authority to increase amount previously set because he disagreed with amount set by first judge)

GROUND SIX: The Fourth Amendment claim after felony complaint prepared without affidavits and evidence-probable cause

The Fourth Amendment ensures "the right of the people to be secure . . . against unreasonable searches and seizures," and further requires that "no Warrants shall issue but upon probable cause,".

In California, probable cause to arrest exists when the arresting officer is aware of facts that would lead a person of ordinary care to suspect that the person arrested has committed a crime People v. Price, 1 Cal.4th 324, 420, 3 Cal.Rptr.2d 106, 821 P.2d 610 (1991). There were no facts in this case.

GROUND SEVEN. Statutory right to a speedy trial Sixth amendment right.

A. Zinchenko was arrested on Federal charges on January 21st, 2000, and rearrested on State charges September 2d, 2001. The case went to jury trial

in April 2003 for alleged felony back in September 8 and 17 1999.

The Sixth Amendment to the Constitution provides that "in criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." The federal speedy trial right applies to state prosecutions through the Fourteenth Amendment due process clause. In California, the right is provided by the California Constitution, Article I, § 15.

Accordingly, in serious felony cases, delays of about eight months or more should trigger an inquiry into whether the Sixth Amendment has been violated. *Doggett v. United States, 505 U.S. 647, 652, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992).* In A. Zinchenko case the time from filing complaint in August 2001, until going to trial in April 2003 -18 months.

In general, after an arrest, the defendant must be brought before a magistrate without unnecessary delay, and in any event within 48 hours of arrest, excluding Sundays and holidays[1]Penal Code §§ 825 warrant, amended Jan. 1, 1996)

A/. Statutory right to speedy trial—Time for preliminary hearing

A. Zinchenko was arrested on or about September 2d, 2001. His arraignment and appointment of attorney C. Leftwitch occurred on or about September 9th, 2001. The preliminary hearing started

on November 2d, 2001. All this for something which occurred in September 1999.

His right to speedy trial was violated according to Penal Code § 859b. Setting time for examination where defendant pleads not guilty to felony;

B/. Statutory right to speedy trial—Time for trial

Under Penal Code § 1049.5, in felony cases, the defendant must be brought to trial within 60 days of the defendant's arraignment . In Zinchenko'case 18 months.

GROUND EIGHTH. Constitutional right to speedy trial—Due process claim Fifth amendment right.

A delay prior to arrest or indictment may give rise to a due process claim under the Fifth Amendment of the United States Constitution.[1] In *United States v. MacDonald 456 U.S. 1, 9, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982)* the defendant, an Army officer, was charged with murder, but the charges were dropped and he was discharged. Five years later, an indictment was filed and he was tried and convicted.

Under the California Constitution's due process clause California Constitution, Article I, § 15. an intentional delay prior to indictment may violate a defendant's right to a fair trial, *People v. Archerd, 3 Cal.Sd 615, 640, 91 Cal.Rptr. 397, 477 P.2d 421 (1970)*

The inability of a defendant adequately to prepare his case skews the fairness of the entire

system. If witnesses die or disappear during a delay, the prejudice is obvious.

How we anticipate the neighbors of A. Zinchenko, or V. Ivlev to remember, what exactly they have been doing in the morning of a regular business day on September 17th, 1999. Impossible. So they were DEPRAVED TO STATE AFFIRMATIVE DEFENSE THRU ALIBI.

GROUND NINE. Due process claim, violations on Preliminary hearing Fourteenth amendment right.

There were two major violations. According to the provisions of Penal code § 861. Examination to be completed at one session; The preliminary examination shall be completed at one session or the complaint shall be dismissed. The preliminary hearing started on November 2d, 2001 and was completed Monday, November 5th, 2001. A. Zinchenko claimed exactly at that time judge D. Horovitz met with Mark and Lisa Babaian in private, which is another major violation. Most probably the bribe was set and delivered at that time. Allegedly FBI SA witness Jennifer Amo also was part of that hearing.

The second violation concerned provisions of Penal Code § 867. Exclusion and separation of witnesses. Including massive and systematic lies of Mark and Lisa Babaian regarding fake marriage, fake Jewish and fake Armenian ancestry, fake son Max,

fake jobs, details of what exactly happened at their house WAS IMPERATIVE TO KEEP THEM SEPARATELY, as well special agent J. Amo, whose abusive report was main prosecution document.

GROUND TEN. Due process claim, violations on Preliminary hearing Fourteenth amendment right by Intimidation of the Attorneys. On preliminary hearing Attorney Theodore S. Flier/ New York school of Law/ SB#23734 in business since 1953 was cross examining the prosecution witness M . Babaian.

Judge David Horowitz chased him mercilessly 20 times: "Go to another area! We already asked this! That's irrelevant question!" /CRT p.37, ln.17/, /CRT p.42, ln.5/, /CRT p.42, ln.14/, /CRT p.42, ln.16/, /CRT p.45, ln.9/, /CRT p.45, ln.16/, /CRT p.48, ln.24-26/, /CRT p.49, ln.14-15/, /CRT p.49, ln.24/, /CRT p.49, ln.27/, /CRT p.51, ln.7-8/, /CRT p.51, ln.25-26/, /CRT p.58, ln.2-3/, /CRT p.58, ln.6 /CRT p.68, ln.8/, /CRT p.85, ln.28/, /CRT p.86, ln.2/, /CRT p.87, ln.1-2/, /CRT p.89, ln.9/, /CRT p.89, ln.11/. to the point Attorney T. Flier could not take it anymore: I understand that you are not interested in my credibility questions! /CRT p.52, ln.4-5/.

The credibility of the only victim - witness regarding September 17th is critical. According to these two rules and the fact M. Babaian officially told

LAPD and LASD he did not see who attacked him. Evidence Code §1200. Hearsay Rule; §1202. Credibility of Hearsay Declarant.

At the end Attorney T. Flier is not allowed to reenter the case. Judge W. Pounders hates independent attorneys.

GROUND ELEVEN. Sixth Amendment claim, including the right to confrontation. Federal Bruton rule- Use of codefendant's confession.

This is the most important of all claims. This claim shows how incompetent is Judge W. Pounders, former Deputy Attorney General, of California, who believes the media should pay 100% close and personal attention to his cases. The same great comment goes to Mr. Siciliano DA Assistant A. Colannino, who was so sarcastic in his respondent brief in appeal process.

Judge W. Pounders and Prosecution made a tremendous effort, to convince every body, the worthless tapes of inexperienced FBI special agent J. Amo are worth IMPLIED CONFESSION, because when Zinchenko and Ivlev did not deny vigorously the charges, they silently accepted them.

One of the fundamental rights in American Judicial System is the right to confront the witness. At the end of the trial the attorneys, the defendants Zinchenko and Ivlev were bagging Judge W. Pounders to exercise defendant's right to testify. To be cross

examined and to show they are innocent. *(Rock v Arkansas (1987) 483 US 44, 97 L Ed 2d 37, 107 S Ct 2704).*

Judge W. Pounders probably was concerned about conflicts with J. Amo report, prepared by the memory of falling in love lesbian with the Russian prostitute Tonkih, a potential rise of very reasonable doubt about the whole "made-up" case.

This ruling was critical, because destroyed the Constitutional fairness of the whole process, preventing the attorneys to cross-examine codefendants and has made the whole case prejudicial regarding their respective defendants, deprived of the Constitutional right to challenge these implied confessions.

(judge Ponders case here, see jury instruction 6.24, but still inadequate without 3.18) is B entitled to severance or some other relief? In *Delli Paoli v. United States,* Delli Paoli v. United States, 352 the United States Supreme Court said no, reasoning that the jury could be trusted to follow the instructions to consider the confession against A and ignore it against B.

The Court in *Bruton* Bruton v. United States., 391 U.S. 123, 124, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968). noted that it was dealing with the *constitutional right of cross-examination*, which is included in the right of an accused in a criminal case to confront the witnesses against him or her as secured by the Sixth Amendment. That right is violated if A, by

his or her confession, is a witness against J, but cannot be cross-examined.

Penal Code § 1098's authorization of separate trials for codefendants refers to "severance," not "bifurcation. "*People v. Wojahn, 150 Cal.App.3d 1024, 1033, 198 Cal.Rptr. 277 (1st Dist.1984).*

The decision to block testimony of Zinchenko and Ivlev was crucial error, adding up to the fact there where no witnesses, no evidence.

GROUND TWELVE: Violation of Right to fair and due process including the right to trial by judge who must be an impartial judge. Fourteenth amendment right.

Pounders was a gatekeeper to U.S. missiles side during the tense days of the 1962 Cuban missile crisis and the Nov. 22. 1963. assassination of President John F. Kennedy. He was so scared in his underground silo to be first target of the Russians, than he could not take it anymore and he resigned from military after 3 years. He likened the experience to being an inmate at the County Jail. That cold war episode has stained his soul for life with fear and horror. He definitely should be challenged peremptory on his impartiality in this case according to Code of Civil Procedures § 170.6.

Mark and Lisa Babaian, Igor Krassiy were looked with sympathy by Judge W. Pounders, because they were money launderers and looters of "evil"

empire Russia.

GROUND THIRTEEN: Judge W. Pounders violated Defendant's right to Sua Sponte Instruction of the Jury on Defendant's theory or defense made it fundamentally unfair. Fourteenth amendment

A trial court has a duty to instruct, sua sponte, on a defense to the charge "if it appears that the defendant is relying on such a defense, or if there is substantial evidence supportive of such a defense and the defense is not inconsistent with the defendant's theory of the case." *(People v. Barton, 12 Cal. 4th 186, 195, 47 Cal. Rptr. 2d 569, 906 P.2d 531 (1995))*

By sealing the criminal record of Babaians from Germany and 2 grand thefts from Los Angeles Judge W. Pounders failed his Sua Sponte responsibilities to instruct the Jurors, that based on A. Zinchenko knowledge of their criminal past and upcoming INS interviews, Babaians and I. Krasiy had a compelling reason to frame A. Zinchenko. This failure of Judge Pounders created the image, that Homosexual hit man and lesbian prostitute mobster, are successful business people attacked by petty criminals. That wrong image created a lot of sympathy of the jury to the victims.

Alternative theory for the events on September 17th, 1999.

Space limit, please look at FAC

GROUND FOURTEEN: Malicious and character

damaging statements by Judge W. Pounders regarding defendants - making inroads over the minds of jurors. Fourteenth amendment.

This is in Jury Instruction No. 2.51, Page 7 *In deciding whether or not to testify, the defendant may choose to rely on the state of the evidence and upon the failure, if any, of the People to prove beyond a reasonable doubt every essential element of the charge against him. No lack of testimony on defendant's part will make up for a failure of proof by the People so as to support a finding against him on any such essential element.*

Judge W. Pounders is making one admittance, how he prejudges the cases and how important is to" frame" the people /CRT p.1918, ln.3-10/*Accept that as an explanation for failure to deny at any time the continued accusations. that was the whole point of the phone call, to get Mr. Zinchenko to make statements about his culpability*(isn't it called illegal "framing" using illegal means" where you the super Judge, the former Deputy Attorney General - for bribes, are inferring, suggesting, implying absurd way of thinking to send innocent person 25 years to life in jail), *and although he did not say he did it specifically, he made statements that an innocent person would not have made. An innocent person would have at some point said I'm tired of you constantly accusing me of Doing this. You know I didn't have anything to do with it.*

Never any statement like that.

GROUND FIFTEEN: Fifth Amendment claim. Violation of the Constitutional Right of Defendant against Double Jeopardy through multiple overlapping counts for the same transaction in violation of Penal Code § 654 regarding incident on September 17th, 1999.

Penal Code § 654 applies when a course of conduct violates more than one statute but constitutes an "indivisible transaction." An indivisible transaction is one with a single intent and objective underlying a course of criminal conduct which is not divisible in time (Neal v. State, 55 Cal. 2d 11, 9 Cal. Rptr. 607, 357 P.2d 839 (1960);

The Act on September 17th, 1999 could not be an attempted murder with the malicious intent for the following reason: All the testimony support the object of dispute to be a Black BMW. The only OVERT ACT committed is Overt Act # 8 struggle for the car keys in which the cut on the lower right side is consistent with the fight for the keys held by the victim exactly in the vicinity of lower right side.

According to the only witness David Yong: the Silver BMW was on the right side and white Taurus to the left /CRT p. 331, ln 10-12/

GROUND SIXTEEN: Trial court INSTRUCTION to the jury accepting the attack on September 17th to be conducted by Zinchenko and

Ivlev without evidence supporting beyond reasonable doubt such attack violated Defendants Constitutional rights to Fair and Due process·Fourteenth Amendment./Jury Instructions 8.69, Page 11/

Errors in reasonable doubt instruction which created significant risk that jurors could find guilt in state trial based on threshold of proof below that required by Constitution were not harmless beyond a reasonable doubt where Commonwealth's case rested substantially on credibility of alleged victim. *Lanigan v. Maloney, C.A.I (Mass.) 1988, 853 F.2d 40, certiorari denied 109 S.Ct. 788, 488 U.S. 1007, 102 L.Ed.2d 780.*

The only witness D. Yong never been questioned by DA Siciliano A. Colannino for a reason. Nothing is there to support the charges: He had not hear any yelling and treats/CTR p. 334, ln. 17-19/; the two attackers had dark, grey spiky hair like Georgians or Italians - A. Colannino/CTR p. 322, ln. 8-9/, but Zinchenko did not have much gray hair, Ivlev is blond; the car according to D. Yong was white Taurus /CTR p. 334, ln. 17-19/, bur according to M. Babaian was old Nissan

GROUND SEVENTEEN .Violation of VICINAGE Right Of Jury Selection. Sixth Amendment claim - the right to an impartial jury

Demonstrate that member of jury which heard his case was biased is entitled to federal habeas corpus

relief. Depree v. Thomas, C.A.11 (Ga.) 1991, 946 F.2d 784.

Strange enough on Judge Pounders court the jurors from the previous day-consider preselected by him - are coming for the service. There are no ethnic Russians, but there are four Armenians, while Babaians are claiming Jewish-Armenian ancestry and definitely they are viewed with a lot of sympathy, because their criminal and mobster past is expunged from the record.

In classical discrimination case an effort is made to exclude other ethnic groups in order to achieve higher percentage for the desired group.

GROUND EIGHTEEN: Sixth Amendment Claim. Violation of Constitutional right by denial of effective assistance of counsel.

Habeas corpus relief on ground of incompetency of counsel or denial of effective counsel will lie granted only when trial was a farce, or a mockery of justice,. *Scalf v. Bennett, C.A. 8 (Iowa) 1969, 408 F.2d 325, certiorari*

2/. Both attorneys quite suspiciously stipulated to block any questioning of their clients and although mentioning few times they would testify-that never happened.

3/. There were no motions or challenges to

evidence. they did not offer any idea about jury instructions and they left the wacky judge to do what ever he likes regarding jury instructions and selection. The Jury instructions were 100% W. Pounders.

4/. The motion for new trial was oral, no hearing, no papers involved.

5/. There was no strategy and theory of defense .

6/. How about to check under what motion and decision the case reappeared in Superior Court after dismissal in US District Court.

How intimidated attorneys could challenge a schizophrenic judge who is so well connected, carries a gun and could send you to jail. Attorneys are not that brave.

GROUND NINETEEN. Fourteenth Amendment claim. Jury instructions, which made the trial fundamentally unfair

"nothing results in more cases of reversible error than mistakes in jury instructions." *People v Thompkins* (1987) 195 CA3d 244, 252, 240 CR 516.

Instructions which Judge W. Pounders and DA Assistant Colannino missed:

Malice aforethought Instruction - CALJIC 8.11 Fundamental instruction for this particular case. Here missing an element of almost all charged offences. Elements of all charged offenses critical. *People v Cummings* (1993) 4 C4th 1233 1311, 18 CR2d 796. This includes instructions on states of mind. The conduct of

the trial and the jury's duties.

-CALJIC 1.06-1.08 (introductory instructions),

-CALJIC 17.53-17.60 (concluding instructions)

Circumstantial evidence see CALJIC 2.01 *People v Marquez (1992) 1 C4th 553, 577, 3 CR2d 710; People v Yrigoyen (1955) 45 C2d 46, 49, 286 P2d 1;*

Alibi. *See* CALJIC 4.50-4.51. *People v Costello (1943) 21 C2d 760, 765, 135 P2d 164.*

DEFENSE Limiting purpose instructions:

CALJIC 2-10; CALJIC 2-23; CALJIC 2-50; CALJIC 12.48.5

Witness has prior felony conviction CALJIC 2.23;

Witness exercised privilege to refuse to testify CALJIC 2.25; CALJIC 2-26;

Prosecutor's questions are not evidence CALJIC 2.42;

Is not supported by the evidence. *People v McNeill (1980) 112 CA3d 330, 339, 169 CR 313.*

GROUND TWENTY: Trial court's denial of Petitioner's motion for a new trial, violated is guaranteed state and federal constitutional rights.

(1) Supporting FACTS: After a jury trial conviction. Petitioner's counsel joined codefendant, Zinchenko, in a motion for a new trial based on erroneous evidentiary rulings. Counsel argued that the court had unfairly excluded evidence against his accusers of organized criminal behavior and other

evidence of moral turpitude. The trial court denied the motion stating it would be an "undue consumption of time," and that "it isn't logical that the accuser! would accuse these defendants...falsely." Petitioner's defense was vicarious to Zinchenko's. When Zinchenko's defense was turned down. Petitioner was left with nothing but the excluded evidence with which to present his defense.

GROUND TWENTY ONE: Trial court's exclusion of evidence showing prosecution's key witnesses' motives to lie and falsely accuse Petitioner, violated his guaranteed state and federal constitutional rights.

(1) Supporting FACTS: The trial court excluded defense evidence of prosecution's key witnesses (Mr. & Mrs. Babaian), association with an organized Russian-Mafia mob. The evidence was supported by declarations, FBI files and Interpol reports. In the United States the Babaians further engaged in illegal enterprises. This evidence was also supported by declarations, and police reports

GROUND TWENTY TWO: Trial court's exclusion of evidence showing prosecution's key witness' prior crimes of moral turpitude, violated Petitioner's guaranteed state and federal constitutional rights.

(1) Supporting FACTS: The trial court excluded defense evidence of conduct constituting acts of moral

turpitude not giving rise to a conviction of Lisa Babaian Petitioner's counsel objected in trial, in motion for a new trial, and on appeal. The appellate court reasoned "an undue consumption of time" to support its denial.

GROUND TWENTY THREE: Trial court's admonishment of jurors in how to select a foreman, violated Petitioner's guaranteed state and federal constitutional rights.

(1) Supporting FACTS: The trial court admonished the jury, suggesting methods for selecting a jury foreman. It was not just a simple word, but several long paragraphs explaining what is and what is not appropriate to accomplish this. The court made suggestions at length on the "type" of person to consider, and the "method" for selection.

VII. CONCLUSIONS

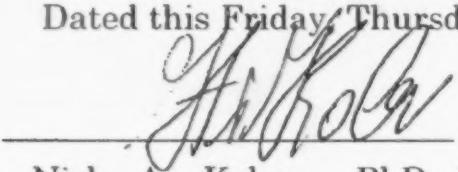
This case is smelly product of corrupt, bias, uncontrollable trade with human dignity between former FBI chief J.V. de Sarno and 3 judges from L.A. Superior Court in defiance of State and Federal Constitution, fair and due process, a worst miscarriage of justice.

Only immediate hearing and release in the court room is acceptable outcome of this Habeas Petition.

This Habeas Petition was discussed and approved by A. Zinchenko at the last appointment in July 2007.

I declare under penalty and perjury under the laws of the State of California AND ACCORDING TO U.S.C. Title 28 § 1746 that the foregoing is true and correct according to my knowledge and believe.

Dated this Friday, Thursday, August 30, 2007



{signature}

Nick A. Kolev PhD PE None Attorney Christian Ministry helper.

First correction November 08th, 2007

Second correction December 25th, 2007

ALEXANDER ZINCHENKO V00139-B4-137
P.O. BOX 5005 STATE PRISON,
CALIPATRIA, CA 92233

CASE NO.

In The

Supreme Court of the United States

Alexander Zinchenko.(In Pro Se)

V00139-B4-137 P. O. Box 5005 State Prison,

CALIPATRIA, CA 92233,Ph. (760)348-7000Ext.5164

v. **Petitioner**

L. E. Scribner, Warden

Respondent

On Petition for Writ of Certiorari

US Court of Appeal for the 9th Circuit Case:07-55048

PETITIONER APPENDIX

August 2007

PETITIONER APPENDIX

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4(A). US DISTRICT COURT - JUDGMENT

5 REPORT AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE.

6. MOTION TO PETITION US 9TH CIRCUIT FOR CERTIFICATE OF APPELABILITY

1. US COURT OF APPEALS-9TH CIRCUIT DENIAL ORDER FOR REHEARING En Bank

FILED

JUN 01 2007
CATHY A. CATTERSON, CLERK,
US COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALEXANDER ZINCHENKO Petitioner-Appellant	) Case No.: 07-55048) D.C. No. CV-06-00953-JFW) Central District of California,
vs.	) Los Angeles
L.E. SCRIBNER, Warden Respondent-Appellee	) ORDER

Before: SILVERMAN and CALLAHAN, Circuit Judges.

The request for certificate of appealability is DENIED. *See* 28 U.S.C. §2253©(2). All pending motions are denied.

FILED
May 30 2007
CATHY A. CATTERSON, CLERK,
US COURT OF APPEALS

JUDICIAL COUNCIL
FOR THE NINTH CIRCUIT

In re Charge of	Case No.: 07-08950
Judicial Misconduct	ORDER AND MEMORANDUM

Before: SCHROEDER, Chief Judge

A complaint of misconduct has been filed against a district judge and two magistrate judges of this circuit. Administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules), issued pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. §§ 351-364.

Complainant, a non-attorney, sought to file a petition for habeas corpus on behalf of a state prisoner. The original assigned magistrate judge dismissed the petition with leave to amend by a date certain, noting that the petition named the wrong warden as respondent, was a collection of incoherent and conclusory statements, and needed to be signed either by the petitioner pro se or by an attorney admitted to practice before the court. The judge specifically noted

that complainant could not act as the petitioner's legal representative. Rather than filing a timely amended petition, petitioner and/or complainant submitted a variety of motions and requests that did not comply with the magistrate judge's order. Petitioner also filed a "motion for peremptory challenge" of the magistrate judge, which the district judge denied. The case was subsequently reassigned to a new magistrate judge, who issued a Report and Recommendation for dismissal of the case without prejudice. The district judge entered judgment to that effect, and petitioner has an appeal pending.

The case history was ascertained by reviewing the docket sheet and relevant filings. The misconduct complaint itself contains only general allegations against the judges, referring to them as "hypocrites," "masters of bigotry," and "liars." Complainant appears to argue that the judges are biased against prisoners and or non-attorney representatives and unduly rely on court rules, forms and procedures to discriminate against prisoners.

This complaint relates to the judges' rulings and decisions in a habeas proceeding. A complaint will be dismissed if it is directly related to the merits of a judge's ruling or decision in the underlying case. 28 U.S.C. § 352 (b) (1) (A) (ii) ; Misconduct Rule 4(c)(1). A challenge to a judge 's rulings should be sought, by the petitioner, through the correct review procedure and not through the procedures for judicial misconduct.

See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982)(If complainant wants to challenge the judge's rulings, correct review procedure, "not the procedures for judicial misconduct, [is] the proper remedy.") Only a court has the power to change a decision or ruling. The judicial council, the body that takes action under the misconduct complaint procedure, does not have that authority. Charges related to the merits of the judges' rulings and decisions are, therefore, dismissed.

Furthermore, although complainant submitted some exhibits, he failed to include any objectively verifiable proof (for example, names of witnesses, recorded documents, or transcripts) supporting his allegations of bias or other judicial abuse, nor did a limited inquiry produce such evidence. Conclusory charges that are wholly unsupported, as here, will be dismissed. 28 U.S.C. § 352 (b) (1) (A) (iii) ; Misconduct Rule 4(c)(3). The remaining charges are, therefore, also dismissed.

COMPLAINT DISMISSED.

Chief Judge

/Signature /

FILED
CLERK US DISTRICT COURT
JAN 11 2007
CENNTRAL DISTRICT OF CALIFORNIA
BY /SIGNATURE/ DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ALEXANDER ZINCHENKO Petitioner	)Case No.: 07-55048)D.C. No. CV-06-00953-JFW)Central District of California,
vs.	)Los Angeles)
L.E. SCRIBNER, Warden Respondent	)ORDER DENYING)REQUEST FOR CERTIFICATE)OF APPELABILITY

On December 28, 2006, petitioner filed a timely Notice of Appeal from the Judgment entered herein on December 14, 2006. Concurrently, petitioner filed a request for a Certificate of Appealability ("COA").

Under 28 U.S.C. § 2253(c)(2), a COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." The Supreme Court has held that, to obtain a COA under § 2253(c), a habeas prisoner must show that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel,* 529 U.S. 473, 483-84, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000) (internal quotations marks omitted); *see also Miller-El v. Cockrell,* 537 U.S. 322,336, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003).

DOCKETED ON CM
JANUARY 16 2007

Here, petitioner failed to file an amended petition as required by this Court's August 8, 2006 order dismissing the petition with leave to amend. The petition was dismissed for numerous deficiencies that were outlined in both the order dismissing the petition and the Report and Recommendation of the United States Magistrate Judge that was filed after petitioner failed to file an amended petition.

After a review of petitioner's contentions, this Court finds and concludes that petitioner has not made the requisite showing with respect to either of the requisite elements.

Accordingly, petitioner's request for COA is DENIED.

Dated: *1/11/07*

/SIGNATURE/

JOHN F. WALTER
United States District Judge

Presented by:

/SIGNATURE/

FREDERICK F. MUMM
United States Magistrate Judge

FILED
CLERK US DISTRICT COURT
DEC 13 2006
CENNTRAL DISTRICT OF CALIFORNIA
BY /SIGNATURE/ DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALEXANDER ZINCHENKO
Petitioner

vs.

STUART J. RYAN, WARDEN
Respondent

No. CV-06-00953-JFW(FFM)

ORDER ADOPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. §636 the Court has reviewed the Petition, all the records and files herein and the report and recommendation of the United States Magistrate Judge. The Court concurs with and adopts the findings, conclusions and recommendations of the Magistrate Judge.

IT IS ORDERED that Judgment be entered denying the Petition and dismissing this action without prejudice.

Dated: */12/13/06*

/SIGNATURE/

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d)

JOHN F. WALTER
United States District Judge

ENTERED WESTERN DIVISION
CLERK US DISTRICT COURT
DEC 14 2006
CENNTRAL DISTRICT OF CALIFORNIA
BY /SIGNATURE/ DEPUTY

FILED
CLERK US DISTRICT COURT
DEC 13 2006
CENNTRAL DISTRICT OF CALIFORNIA
BY /SIGNATURE/ DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALEXANDER ZINCHENKO
Petitioner

vs.

STUART J. RYAN, WARDEN
Respondent

No. CV-06-953-JFW(FFM)

JUDGMENT

Pursuant to the Order adopting Findings, Conclusions and Recommendations of United States Magistrate Judge,

IT IS ADJUDGED that the Petition is denied and this action is dismissed without prejudice.

Dated: */12/13/06*

/SIGNATURE/

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d)

JOHN F. WALTER
United States District Judge

ENTERED WESTERN DIVISION
CLERK US DISTRICT COURT
DEC 14 2006
CENNTRAL DISTRICT OF CALIFORNIA
BY /SIGNATURE/ DEPUTY

FILED
CLERK US DISTRICT COURT
OCT 25 2006
CENTRAL DISTRICT OF CALIFORNIA
BY /SIGNATURE/ DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ALEXANDER ZINCHENKO Petitioner	D.C. No. CV-06-00953-JFW(FFM)
vs.	REPORT AND
STUART J. RYAN, Respondent	RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable John F. Walter, United States District Judge, pursuant to the provisions of 28 U.S.C. § 636 and General Order 194 of the United States District Court for the Central District of California.

PROCEEDINGS

On February 16, 2006, petitioner, a California state prisoner currently incarcerated at the Calipatria State Prison in Calipatria, California, filed a Petition for Writ of Habeas Corpus by a Person in State Custody ("Petition") pursuant to 28 U.S.C. § 2254.

The Court's review of the Petition revealed that it suffered from the following deficiencies:

1/. The Petitioner improperly named L.E.Scribner as Respondent. The only appropriate respondent is petitioner's immediate custodian (i.e., the warden at Calipatria, Stuart J. Ryan). *See Rumsfeld v. Padilla.* 542 U.S. 426, 434-35, 1^24 S. Ct. 2711, 2717-18, 159 L. Ed. 2d 513 (2004); *see also* 28 U.S.C. § 2242; Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts and the Advisory Committee Notes thereto.

2/. The petition improperly was drafted and signed by a non-attorney. Pursuantto Local Rule 83-2.1, "[a]n appearance before the Court on behalf of another partyor a class may be made only by an attorney admitted to the Bar of or permitted topractice before this Court." The Court cautioned petitioner that a non-attorneymay not serve, or hold himself out. as petitioner's legal representative, nor may heappear on petitioner's behalf. The Court further cautioned petitioner that in anyamended petition, a non-attorney should not act as petitioner's legal representative. The Court advised petitioner that he may appear *pro se* and prosecute this action without obtaining representation by an attorney.

3/. The Petition had not been submitted on either the national form appended to the Habeas Rules or the form currently approved and supplied by the Central District of California for habeas petitions, as required by Rule 2(d) of the RulesGoverning Section 2254 Cases in the United States district Courts and Local Rule83-16.1.

4/. Under 28 U.S.C. § 2254(a), petitioner may only seek habeas relief if he is contending that he is in custody in violation of the Constitution or laws or treaties of the United States. Here, petitioner's claims were not entirely intelligible, and it was unclear how they related to the conviction and/or sentence giving rise to hiscurrent custodial status. The Court was unable to determine from the Petitionwhat relief petitioner seeks because the Petition does not contain allegations that petitioner is in state custody pursuant to an adjudication that was contrary to and/or involved un unreasonable arbitration of validity of constitutional federal law.

5/. Under 28 U.S.C. § 2254(b), habeas relief may not be granted unless petitioner has exhausted the remedies available in the courts of the State.[1]

Exhaustion requires that the prisoner's contentions be fairly presented to the state courts, and be disposed of on the merits by the highest court of the state. *See James v. Borg,* 24 F.3d 20, 24 (9th Cir. 1994); *Cat-others v. Rhay,* 594 F.2d 225, 228 (9th Cir. 1979). Here, it appeared from the face of the Petition that at least three of petitioner's claims had not been exhausted.

Accordingly, on February 22, 2006, the Court issued an Order dismissing the Petition with leave to amend. In its Order, the Court apprised petitioner of the foregoing deficiencies. If petitioner still desired to pursue this action, he was ordered to file a First Amended Petition on the approved Central District habeas form by March 23, 2006, correcting the deficiencies discussed in the dismissal order. Petitioner expressly was cautioned that his failure to timely file a First Amended Petition in compliance with the Order would result in a recommendation that the action be dismissed without prejudice for failure to prosecute.

Petitioner's time to file his First Amended Petition elapsed and petitioner failed to file a First Amended Petition. Moreover, petitioner did not timely seek any extension of time to file his First Amended Petition. Accordingly, on May 4, 2006, this Court issued a Report and Recommendation which recommended that the action be dismissed without prejudice for failure to prosecute. The next day, the Court received a request for an extension of time to file first amended Petition apparently signed by the Petitioner

Note:The habeas statute now explicitly provides that a habeas petition brought by a person in state custody "shall not be granted unless it appears that - (A) the applicant has exhausted the remedies available in the courts of the State; or (B)(i) there is an absence of available State corrective process; or (ii) circumstances exist that render such process ineffective to protect the rights of the applicant." 28 U.S.C. § 2254(b)(1).

Based on the appearance that petitioner merely needed additional time to comply with this Court's

order, the Court withdrew it's Report and Recommendation and granted petitioner leave to file a First Amended Petition by June 2, 2006. The order specifically advised petitioner that he must sign any First Amended Petition on his own behalf and that "no documents signed by N. Kolev on behalf of Alexander Zinchenko will be accepted by the Court." The order also stated that a "failure to file a First Amended Petition in accordance with this order will result in recommendation of this action be dismissed without prejudice for failure to prosecute and/or failure to comply with a Court order."

On June 5, 2006, this Court received a document signed by N. Kolev entitled "Complaint of Organized Manipulation of Habeas Corpus Legal Process." Bound together with that document was a rambling First Amended Petition for Writ of Habeas Corpus by a Person in State Custody which, at least in part, incorporated the Central District form required for use in habeas proceedings. (Central District form number CV-69). The First Amended Petition, however, again in violation of this Court's previous orders, was not signed by petitioner. Attached after page 139 of the petition, was a page that appeared to be a partial copy of the signature page of the original February 16, 2006 filing of this case. This page bears petitioner's signature of January 16, 2006. Obviously, a First Amended Petition in response to this Court's May 18, 2006 order could not have been executed in January 2006. The Court also noted that attached as exhibits to the First Amended Petition are documents dated as late as May 2006.

Given the foregoing deficiencies, the documents lodged on June 5, 2006 were rejected by the Court and returned.

On July 14, 2006, the Court received another First Amended Petition ('FAP") from petitioner. (The Court received a duplicate copy of the FAP, with exhibits that were not attached to the July 14, 2006

FAP, on July 24, 2006.) The FAP largely ignored the instructions contained in the February 22, 2006 Order, failed to correct the deficiencies in the Petition, and added additional deficiencies. Therefore, the Court entered an order dismissing the FAP with leave to amend on August 8, 2006. The order granted petitioner until September 7, 2006 to file a Second Amended Petition. Once again, petitioner was cautioned that his failure to file a Second Amended Petition within the time allotted by the Court would result in a recommendation that the action be dismissed without prejudice for failure to prosecute.

Petitioner's time to file his Second Amended Petition has elapsed, and no Second Amended Petition has been filed by petitioner, nor has petitioner sought an extension of time to file a Second Amended Petition.

DISCUSSION

This action should be dismissed without prejudice. The FAP is defective for the reasons stated in the Court's August 8, 2006 Order Dismissing Petition with Leave to Amend. Petitioner has not filed a Second Amended Petition in compliance with the order or requested an extension of time to do so. The Court has inherent power to achieve the orderly and expeditious disposition of cases by dismissing actions for failure to prosecute and/or failure to comply with a Court order. *See Link v. Wabash R.R.,* 370 U.S. 626, 629-30, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962); Fed. R. Civ. P. 41(b).

In *Carey v. King,* 856 F.2d 1439 (9th Cir. 1988), the Ninth Circuit cited the following factors as relevant to the Court's determination whether to dismiss an action for failure to prosecute: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits, and (5) the availability of less drastic sanctions." *See Carey,* 856 F.2d at 1440.

of dismissal. As a result of petitioner's failure to file a Second Amended Petition ujcorrecting the deficiencies of the First Amended Petition, this action has been and wall continue to be stalemated. Moreover, it does not appear to the Court that there are any less drastic sanctions available for the Court to impose. While the Court finds that the third and fourth *Carey* factors do not militate in favor of dismissal, the Court has concluded that the other three factors in this instance outweigh the third and fourth factors.

RECOMMENDATION

IT THEREFORE IS RECOMMENDED that the District Court issue an Order: (1) approving and adopting this Report and Recommendation; and (2) directing that Judgment be entered denying and dismissing this action without prejudice.
DATED:10/25/06

/SIGNATURE/
FREDERICK F. MUMM
United States Magistrate Judge

NOTICE

Reports and Recommendations are not appealable to the Court of Appeals, but may be subject to the right of any party to file objections as provided in the Local Rules governing the duties of Magistrate Judges and review by the District Judge whose initials appear in the docket number. No notice of appeal pursuant to the Federal Rules of Appellate Procedure should be filed until entry of the judgment of the District Court

US COURT OF APPEALS Docket No. 07-55048

US COURT OF APPEAL FOR
THE 9TH CIRCUIT

ALEXANDER ZINCHENKO Petitioner	) Case No.: 07-55048) D.C. No. CV-06-00953-JFW) Central District of California,) Los Angeles
vs.	)
L.E. SCRIBNER, Warden Respondent	) MOTION TO PETITION 9TH) CIRCUIT FOR COA

TO THE CLERK OF THE NINTH CIRCUIT COURT OF APPEALS-HONORABLE CATHY CATTERSON AND TO ALL PARTIES ON RECORD:

The Petitioner Alexander Zinchenko - Calipatria State Prison Inmate, V00139-B4-137, P.O.Box 5005, Calipatria, CA 92233, Phone: (760) 348-7000, Ext. 5164, Fax (760) 348-6064 - respectfully shows:

1. That Petitioner applied to the Honorable John F. Walter, Judge of US District Court, Central District of California, Western Division-Los Angeles on February 16th 2006 for Writ of Habeas Corpus under US Title 28, §2254 , pleading his incarceration in California State Prison - Calipatria is in violation of US Constitution, copy of which application and Four/4/ Attachments is attached.

2. The said Judge of said United States District Court denied

petitioner's application for a writ of habeas corpus by an order dated December 13th, 2006, a copy of which is attached.

The said Judge of said United States District Court denied

petitioner's application for a writ of habeas corpus by an order dated December 13th, 2006, a copy of which is attached.

3. Petitioner filed a notice of appeal from said order in said district court on December 28th, 2006. A copy of said notice of appeal is attached.

4. The detention complained of by petitioner arose out of processissued by a state court, to wit: Superior Court of Los Angeles County, Hon. William Pounders, Judge No. BA221557 convicted by Jury of 12 on May 29th, 2003 and sentenced him 25 years to life under California PC Sections 182/187 - Conspiracy to commit a murder.

5. The above-named Judge J. Walter of said United States District Court has refused to issue a Certificate of Appealability upon petitioner's motion for the reasons stated in his order dated January 11th, 2007 denying petitioner's motion for a Certificate of Appealability. A copy of that order is attached hereinafter.

6. Under Rule 22(b)(l) of the Federal Rules of Appellateprocedure, petitioner may not appeal to this Court from the denial of application for a writ of habeas corpus without a Certificate of Appeala-bility.

7. In addition to the reasons given in petitioner's application for a writ of habeas corpus, a Certificate of Appealability should issue for following reasons:

I. Examining the CIVIL DOCKET FOR CASE: 06-CV-00953-JFW(FFM) I have find out that: *ALL MY PLEADINGS REPRESENTING AFFIRMATIVE DEFENSE OF MY FIRST AMENDED PETITION ARE STRIKEN OUT OF THE RECORD* by Magistrate Judges F. Olquin and F. Mumm and confirmed by

District Judge J. Walter. Please, see docket report items No. 4; No. 5; No. 6; No. 8; No. 9.

II. Nothing in the Docketed record represents my position on Habeas Corpus abuse of process in US District Court. I doubt if in this consideration of COA the Court of Appeal has EVEN my full 140 pages Habeas Corpus First Amended petition plus 4 Attachments numbering 327 pages of supporting materials.

III. In order to make a FAIR AND DUE evaluation of my request for COA, I respectfully petition the Court of appeals to consider my APPELLANT'S RECORD APPENDIX, including ADDITIONAL 93 pages of the Record */comprising also the stricken pleadings submitted between July and December of 2006, which are not even mentioned in the docketed entries such as: 1/. Petition to Federal Grand Jury for corruption investigation; 2/. Notice of Corrupt Ruling of magistrate Judge F. Mumm; 3/. Notice of filing objection to Magistrate judge F. Mumm order proposal; 4/. Objection to Magistrate judge order proposal; 5/. Notice of filing of final version of Amended petition of A. Zinchenko; 5/. Letter to Governor Scwarzenegger 6/. Letters/4 of them/ between Calipatria litigation Department and N. Kolev.*

IV. The complaint to 9th Circuit Court of Appeal against District judges J. Walter and Magistrate judges F. Olguin and F. Mumm by my PRO Bono helper N. Kolev, also should be considered, before to make decision on Petition for COA.

V. My Habeas Corpus writ was denied on technicalities 1/. Who is the warden of State prison?; 2/. The electronic form used versus District standard form; 3/. Untrue statement that Petition is drafted and signed by Non attorney. 4/. The absurd exhaustion

requirements involving federal crimes - FOR EXAMPLE: Ground Number One - *Organized crime influence to deny access to Federal case 00-CR-89, violation of 14th amendment rights, violation of Freedom of Information Act.* There is nothing in the state law how such violations of US Constitution could be exhausted in State Court system? - unless some very smart, very intelligent and very experienced judges like J. Walter and F. Mumm give us a clue. Both of them are rooky judges appointed by corrupt Bush administration with very little or no experience in large sections of Federal law. The judgeship does not require a candidate to study some curricula, to take tests or exams. He is JUST appointed!!!!!!!

VI. EXHAUSTION IS NOT A JURISDICTIONAL REQUIREMENT. Exhaustion DOES NOT APPLY IN EVERY CASE. See Strickland v Washington (1984) 466 US 668, 679, 80 L Ed 2d 674, 688, 104 S Ct 2052. Failure to exhaust may be raised by the respondent as a defense to a specific unexhausted claim, but it may also be waived. This waiver must be express in cases governed by AEDPA. 28 USC §2254(b).

The exhaustion requirement does not apply when state remedies are unavailable or inadequate. *28 USC §2254(b)(l)(B); Engle v Isaac (1982) 456 US 107, 71 L Ed.* How the Ground Two: *Unfair court procedures dominated by the mob.* could be exhausted in State court when the mob is involved in money laundering, smuggling of people, killings in Germany, Russia, Armenia, USA, Mexico and sending two innocent US citizens-A.Zinchenko, V.Ivlev 25 year to life in jail?!?! How the smart judges F. Mumm and J. Walter could exhaust such a claim in the California State Court system?!?!

How the violation of Jury selection procedure by the cold war monger-judge and Russophobe W. Pounders could be exhausted when *he brought in ethnic Armenian jurors from the previous day to boost the Armenian representation in the case*, in the trial, where Russian mobster and plaintiff M. Dovgoniuk was claiming falsely Armenian ancestry. What the smart judges J. Walter and F. Mumm would offer as an exhaustion? May be to replace the Armenian jurors with some other ethnicities and redo the Jury trial with cold war monger-judge W. Pounders again? May be that would prove the jurors have no impact on judge W. Pounders self-made up of the final result?!?!

May be - as a chipset alternative - we should go to Hollywood fortune teller to throw Taro cards and to prove the Armenian jurors were actually sleeping in deliberation time and did have no impact on the final outcome. How stupid and absurd are these 20 exhaustion recommendations lacking specificity and even common sense?!?!? That's the level of Federal judgeship in dealing with US citizens lifes and liberties?!?!

VII. The right to have my legal mail and the mail with my helpers protected; 5/. All the requests for access to sealed parts of the record were left unanswered; The right to use, or not to use pro bono helpers was restricted and closely abused*/See Attachment 7-mail reaching San Bernardino transit station empty?.* As a masters of hypocrisy Magistrate judges F. Olguin and F. Mumm are calling in Sacramento Rick Decker 916-323-3202 - Correctional Facilities legal policies - to call Calipatria to block volunteer's access to Zinchenko and after that *they are*

claiming the Petition is late and not signed. When Kolev is sending in a desperate move TO PRESERVE DEAD LINE a copy signed by him to district judge, the magistrates F. Mumm and F. Olguin are prohibiting him to do even the mail services, threatening him with contempt of Court.

When after their ruling the jurisdiction shifts to District judge and every thing is send to J. Walter, they claim the service is defective, because they did not receive a copy, but if they receive a copy that is a violation of their order. This is hypocrisy and bigotry in the high level of Federal judgeship·OBVIOUSLY MASTERING HYPOCRISY AND BIGOTRY IS THE MOST IMPORTANT QUALITY OF CONTEMPORARY FEDERAL JUDGE?!?!? !!!!!!!!!!

VIII. The dismissal is based on the absurd contention that such violations of DUE and FAIR process like: A/. Double jeopardy by Federal and State trial for the same offence; B/. Involvement of the organized crime and special services to arrest without probable cause, to shield the plaintiff's criminal record and current violations on IRS, INS, laws; C/. The denial by judge W. Pounders to A. Zinchenko to present Theory of defense, D/. The manipulation of the jury and lead person selection; E/. The restriction to present alibi; F/. The restriction to present any defense witnesses; G/. The conviction based on NO witnesses, NO material fact proof; NO admittance of guilt · WOULD NOT RAISE ANY CONSTITUTIONAL CLAIM ?!?!?! I RESPECTFULLY OFFER MY First Amended Complaint to evaluate these pleading arguments.

IX. Any dismissal at this stage of the project could

be only WITH PREJUDICE. My only option is Stay and abeyance. To avoid the dilemma posed by the AEDPA limitations period several circuits, including the Ninth Circuit, have adopted a procedure known as *"stay and abeyance"* or *"withdrawal and abeyance"* to deal with mixed petitions. In the Ninth Circuit, when a petitioner files a mixed petition, the court must give the petitioner the opportunity to strike or withdraw the unexhausted claims. *Olvera v Giurbino* (9tl Cir 2004) 371 F3d 569, 572; *Anthony v Cambra* (9th Cir 2000) 236 F3d 568, 574

The petition containing the remaining, exhausted claims is then held in abeyance while the petitioner exhausts the unexhausted claims in state court and amends the still-pending petition with the dismissed claims. The new claims are timely because they "relate back" to the original petition, which was timely when it was filed. 236 F3d at 573 For further discussion of stay and abeyance, see Appeals & Writs §4.101; Hertz & Liebman, Federal Habeas Corpus Practice and Procedure. Of course both very knowledgeable judges F. Mumm and J. Walter are talking about unexhausted claims as a way to deny Habeas Corpus, although.

Wherefore, petitioner respectfully requests that you ,issue a Certificate of Appealability

Dated A. Zinchenko.